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Security Council Committee established pursuant to resolution 1737 (2006)

Note verbale dated 21 May 2007 from the Permanent Mission of Australia to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of Australia to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1737 (2006), and has the honour to submit to the Council a report pursuant to paragraph 19 of resolution 1747 (2007) on the steps taken by the Government of Australia to implement effectively the resolution (see annex).

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Annex to the note verbale dated 21 May 2007 from the Permanent Mission of Australia to the Chairman of the Committee

At 21 May 2007, the Government of Australia (hereafter "Australia") has taken the following steps to implement effectively operative paragraph (OPs) 2, 4, 5, 6 and 7 of Security Council resolution 1747 (2007).

Measures taken in accordance with operative paragraph 2: exercise vigilance and restraint regarding the entry into or transit through Australia of individuals associated with Iran's proliferation sensitive nuclear activities or the development of nuclear weapon delivery systems and notify the Committee of any travel by designated persons

1. The Australian Government has in place established procedures to screen visa applicants and holders for connections to weapons of mass destruction. These procedures are the vehicle by which Australia is implementing OP 2.

2. Australia has a universal visa system requiring non-citizens to have a valid visa in order to enter Australia. In most cases, the non-citizen must obtain the visa prior to travelling to Australia. The Department of Immigration and Citizenship (DIAC) maintains a Movement Alert List (MAL). A check is conducted against the MAL prior to any decision to grant a visa to enter Australia. The MAL is electronically accessible by DIAC officers posted to Australia's diplomatic and consular missions worldwide. A complete MAL update is sent electronically at least daily to Australia's overseas missions. Additional checks are also undertaken at Australian entry points to ensure that any person listed on the MAL subsequent to a visa grant is identified. Where an individual is listed on the MAL, further enquiries must be made before a visa can be granted, or, if it has already been granted, to examine whether it should be cancelled.

3. All additional individuals designated by the Security Council in the annex to Security Council resolution 1747 have been placed on the MAL. Under existing Australian legislation (the *Migration Regulations 1994*), if the Minister for Foreign Affairs determines that a *holder of a visa* is a person whose presence in Australia may be directly or indirectly associated with the proliferation of weapons of mass destruction (Regulation 2.43(1)) visa cancellation may occur under the *Migration Act 1958*. The Minister for Foreign Affairs may also determine that a *visa applicant* is a person whose presence in Australia may be directly or indirectly associated with the proliferation of weapons of mass destruction (Public Interest Criteria 4003(b) and 4003A). Should the Minister for Foreign Affairs make an adverse determination against a *visa applicant* on these grounds, the Minister for Immigration and Citizenship would refuse to grant the visa in accordance with section 65(1)(b) of the *Migration Act 1958*.

Measures taken in accordance with operative paragraph 4: Impose financial restrictions on an expanded list of individuals and entities in accordance with paragraphs 12, 13, 14 and 15 of Security Council resolution 1737 (2006)

4. Australia has implemented OP 4 under the *Charter of the United Nations (Sanctions — Iran) Regulations 2007* (hereafter "the Iran Regulations"). The Iran Regulations took effect on 21 February 2007 to implement Security Council resolution 1737 into Australian law. Australia took action to amend the Iran

Regulations to clarify that financial restrictions also apply to persons and entities designated in the annex to resolution 1747. The amendments took effect on 15 May 2007.

5. Regulation 13 of the Iran Regulations provides that a person commits an offence if the person holds a freezable asset and uses or deals in the freezable asset (including allowing or facilitating such use or dealing). "Freezable assets" are those assets owned or controlled, directly or indirectly, in Australia by designated persons or designated entities. Regulation 14 of the Iran Regulations provides that a person commits an offence if the person, directly or indirectly, makes an asset available to a designated person or a designated entity.

6. "Designated persons" and "designated entities" include those designated in the annexes to resolutions 1737 and 1747, as well as any additional persons or entities designated by the Committee or by the Security Council for the purpose of OP 12 of the resolution. In addition, designated persons and designated entities, include those acting on behalf of, or at the direction of, persons or entities directly designated, as well as entities owned or controlled by such persons or entities.

7. Regulation 15 of the Iran Regulations provides that the Minister for Foreign Affairs can authorize otherwise prohibited dealings under regulations 13 or 14. The Minister can exercise this power to allow for dealings which have been approved by the Committee as exemptions under OP 13, OP 14 or OP 15 of Security Council resolution 1737.

8. While it is the responsibility of banks and other financial institutions to ensure they comply with any requirements to freeze the assets of their clients, the Australian Government is facilitating compliance with the legislation by the financial sector in a number of ways. The Department of Foreign Affairs and Trade (DFAT) has published a list of persons and entities that have been designated by the Security Council under Security Council resolution 1737 and Security Council resolution 1747 and made it available to the public on the internet.

9. In addition, the Australian Transaction Reports and Analysis Centre (AUSTRAC) has issued an information circular to its reporting entities (e.g. financial institutions) outlining Security Council resolution 1747 and Australian legislation, including the amended Iran Regulations. The AUSTRAC circular states that reporting entities should take into account these measures when considering whether particular transactions should be reported to AUSTRAC as suspicious under the *Financial Transaction Reports Act 1988*.

Measures taken in accordance with operative paragraph 5: Prohibition on the procurement, directly or indirectly, of any arms or related materiel from Iran, whether or not originating in the territory of Iran

10. Australia has implemented OP 5 through amendments to the *Customs (Prohibited Imports) Regulations 1956* (hereafter "the Customs Import Regulations") and the Iran Regulations.

A. Customs Import Regulations

11. Regulation 4Z of the Customs Import Regulations has been amended to provide that it is an offence to import into Australia arms or related materiel from Iran. This offence covers all imports of arms or related materiel from Iran,

regardless of whether the arms or related materiel originates from Iran. The amendment took effect on 15 May 2007.

B. Iran Regulations

12. A new Regulation 10B has been inserted into the Iran Regulations to provide that it is an offence to engage in conduct resulting in the procurement of arms or related materiel from Iran or a person in Iran, regardless of whether the arms or related materiel originates in Iran. A new Regulation 10A has been inserted to provide that this prohibition applies within Australia as well as extraterritorially to Australian citizens overseas.

13. A new Regulation 12A has been inserted into the Iran Regulations to impose specific obligations in relation to Australian aircraft and ships. Regulation 12A provides that the owner, pilot in command or operator of an Australian aircraft must not allow the aircraft to be used in a way that results in the procurement of arms or related materiel from Iran or a person in Iran, whether or not the arms or materiel originated in Iran. Regulation 12A also provides that the owner, master or operator of an Australian ship must not allow the ship to be used in a way that results in the procurement of arms or related materiel from Iran or a person in Iran, whether or not the arms or materiel originated in Iran.

14. The Australian Department of Transport and Regional Services will arrange for the publication of a Marine Notice. A Notice to Airmen has also been circulated informing aircraft operators and pilots operating in Australian airspace that an Aeronautical Information Publication Supplement has been issued to advise of the requirements related to the amended Iran Regulations. Together, these measures will clearly inform Australian-flagged vessels, aircraft operators and pilots operating in Australian airspace of their additional obligations under Security Council resolution 1747.

Measures taken in accordance with operative paragraph 6: Exercise vigilance and restraint in the supply, sale or transfer to Iran of, or the provision to Iran of any technical assistance or training, financial assistance, investment, brokering or other services, related to the supply, sale, transfer, manufacture or use of, any battle tanks, armoured combat vehicles, large calibre artillery systems, combat aircraft, attack helicopters, warships, missiles, or missile systems

15. Australia is implementing OP 6 under its existing defence and strategic goods export control regime. Australian export controls related to the export of military and dual-use technologies are implemented under the *Customs Act 1901*. Regulation 13E of the *Customs (Prohibited Exports) Regulations 1958* (hereafter "the Customs Export Regulations") and additionally, in respect of WMD-related goods and services, in the *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995* (hereafter "the WMD Act"). Export controls under these regulations cover a wide range of defence and related goods and technologies, nuclear related goods and goods and technologies with both civil and military applications. The list of goods controlled forms the Defence and Strategic Goods List (DSGL) and includes equipment, assemblies and components, associated test, inspection and production equipment, materials, software and technology.

16. The export of military and specified dual-use technologies listed in the DSGL is controlled under Regulation 13E of the Customs Export Regulations. Regulation

13E provides that it is an offence to export goods on the DSGL without the approval of the Minister of Defence or his delegate. Australia also applies catch-all controls contained in the WMD Act. This Act and its derived Regulations provide controls for goods, technologies and services not regulated by the Customs Act. The WMD Act prohibits the provision of non-regulated goods or services where there is a reasonable suspicion or belief that the goods or services would or may assist a WMD program. The WMD-related controls regulate the export and transfer, both within and outside Australian territory, of otherwise uncontrolled technologies. The WMD Act's jurisdiction extends to the transfer of intangibles and transfers via intangible means (for example, electronic, photonic). The Minister for Defence will exercise his discretion consistent with OP 6 in considering any application to export military goods to Iran.

17. More detailed information on Australia's export control regime, and a copy of the DSGL, is available on the Australian Department of Defence website at http://www.defence.gov.au/strategy/dtcc.

Measures taken in accordance with operative paragraph 7: States and international financial institutions to refrain from entering into new commitments for grants, financial assistance, and concessional loans to the Government of Iran except for humanitarian and developmental purposes

18. Australia is implementing OP 7 by not entering into new commitments for grants, financial assistance or concessional loans to the Government of Iran except for humanitarian and developmental purposes.